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October 30, 2019

**BY ELECTRONIC FILING
& HAND DELIVERY**

The Honorable Richard G. Andrews
United States District Court for the District of Delaware
844 North King Street
Wilmington, Delaware 19801

*Re: Coalition for Education Reform, M.M. v. Indian River School District
C.A. No. 16-cv-00885-RGA*

Dear Judge Andrews:

We, together with co-counsel Vorys, Sater, Seymour and Pease LLP, represent the Plaintiffs in the above-referenced matter. We write to update the Court on the status of this case, and to respectfully request entry of a Consent Order settling and resolving this matter. The Consent Order is filed contemporaneously with this letter.

As brief background, on January 26, 2017, this Court entered an Order setting a schedule for discovery and motions as agreed upon by the parties in this action and setting dates for a final pretrial conference and jury trial (the “Stipulated Scheduling Order”) [D.I. 21]. Prior to entry of the Stipulated Scheduling Order, the parties engaged in extensive written discovery. On August 28, 2017, the parties agreed to appoint a small panel of expert educational consultants to evaluate Defendant’s George Washington Carver Academy and to develop a report and recommendations

THE HONORABLE RICHARD G. ANDREWS
OCTOBER 30, 2019
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for the parties. Thereafter, the parties entered into a stipulation staying the deadlines in the Stipulated Scheduling Order, subject to further Order of the Court [D.I. 48]. The Court approved that stipulation on September 17, 2017 (the "Stay Order") [D.I. 49]. The parties have worked extensively and cooperatively in an attempt to resolve this case, and have provided the Court with quarterly status reports in accordance with the Stay Order.

The parties are pleased to report a consensual resolution of this case, subject to entry of the Consent Order by the Court. The terms of that settlement are set forth in the Consent Order, which, among other things, appoints a Special Master, Dr. Linda O. Rhen, to oversee implementation of the Consent Order and report to the Court. The parties respectfully request approval of the Consent Order. If the Court has any questions or concerns, the parties welcome an in-person status conference with the Court to fully respond to any issues the Court would like addressed.

As always, counsel is available if the Court has any questions.

Respectfully submitted,

/s/ Christopher P. Simon

Christopher P. Simon (No. 3697)

CPS:nd
Enclosure

cc: David H. Williams, Esquire
Allyson Britton DiRocco, Esquire
Tom McDonald, Esquire
Dr. Linda O. Wren
File Copy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

COALITION FOR EDUCATION REFORM,
M.M., an adult, on behalf of J.W., a minor,
F.C., an adult, on behalf of F.D., a minor, and
T.D., an adult, J.R., an adult, and D.N., an
adult,

Plaintiffs,

v.

INDIAN RIVER SCHOOL DISTRICT,

Defendant.

Civil Action No. 16-cv-00885-RGA

JURY TRIAL DEMANDED

**CONSENT ORDER, SETTLEMENT AGREEMENT, AND APPOINTMENT OF
SPECIAL MASTER**

I.

INTRODUCTION AND BACKGROUND

On September 30, 2016 and by amendment of the Complaint on May 2, 2017, Plaintiffs Coalition for Education Reform (“Coalition”), M.M. (on behalf of her minor child, J.W.), F.C. (on behalf of her minor child, F.D.), T.D., J.R., and D.N. (collectively “individual plaintiffs” and together with the Coalition, “Plaintiffs”), filed the above-captioned action against the Indian River School District (the “District”) seeking, *inter alia*, declaratory and injunctive relief, as well as monetary damages, and alleging, *inter alia*, that the District’s operation and maintenance of certain educational programs conducted at the George Washington Carver Center (“Carver”) unlawfully segregates and discriminates against African-American children within the District in violation of their civil rights.

On September 9, 2017, this Court entered a Stipulation and Order [D.I. No. 50], staying discovery in this action and otherwise holding all Court-ordered scheduling deadlines in abeyance, pending the Parties' initial assessment of Carver and proposed exchange of expert reports assessing the practices, policies and facilities the Defendant and Carver, and meeting and conferring on the same. Thereafter, each Party retained their respective expert; each expert conducted their own assessment of the Carver; and each expert prepared a report. These reports were exchanged by the Parties on March 30, 2018. Since that time, the parties have continued to meet and confer regarding their assessments, and a negotiated resolution of this matter, and now agree to enter into this consent decree, subject to approval of the Court, in order to resolve this matter without further contested litigation.

The parties consent and agree that this Court has personal jurisdiction over them and over the subject matter of this litigation pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. The parties further agree that this Consent Order, Settlement Agreement, and Appointment of Special Master ("Agreement"), subject to approval of the Court, resolves all issues raised in the Plaintiffs' Complaint, and is final and binding on the parties and their officials, agents, employees and successors, and all persons acting on their behalf or in active concert or participation with them.

II. SETTLEMENT OF CLAIMS AND ORDER OF RELIEF

This Agreement is intended to resolve: (i) all claims that may exist on the Effective Date of this Agreement by the Plaintiffs regarding District's unlawful operation of Carver, all defenses before the District and (ii) all claims - whether under federal, state or local law - by any person who accepts relief under this Agreement regarding Defendants' unlawful operation of Carver.

It is therefore, ORDERED, ADJUDGED and DECREED as follows:

III. GENERAL REQUIREMENTS

1. Plaintiffs, the District, and its Board (including each of its members) (Plaintiffs, the District and the Board shall hereafter be defined as the "Parties"), agree, subject to approval of the Court, to the terms of this Agreement and to comply with its provisions to address in good faith, and resolve the claims and issues raised by the Plaintiffs. This Agreement shall be binding upon the District, its Board (including each of its members), successor members of the Board for the District, any District Superintendents implementing policies for the Board, and shall be binding upon the Plaintiffs, and any person who accepts relief under this Agreement.

2. The signatories enter this Agreement in order to avoid further litigation, and for the purposes of judicial economy. This Agreement shall not be construed as an admission on the part of the District or the Board, of violation of any law.

IV. DEFINITIONS

3. The following terms shall be defined as set forth herein:

"Alternative Educational Placement" refers to the removal of a student from his or her designated home school within the Indian River School District to Carver, either for disciplinary or educational reasons.

"Board" means the school board of the Indian River School District and any of its successors.

"CAMP" refers to the Character Academic and Motivational Program, an Alternative Educational Placement for disciplinary reasons within Carver that is considered pre-expulsion intervention (typically 5-10 days).

“Carver” refers to George Washington Carver Center, a District building that houses a number of educational programs, is a constituent school of the Indian River School District, and is located at 30207 Frankford School Rd in Frankford, Delaware.

“Carver Academy Program” refers to the programs provided for District students who currently are placed in Alternative Educational Placements for educational or disciplinary purposes at Carver.

“District” is the Indian River School District.

“Effective Date” is the date that this Agreement is approved and entered by the United States District Court for the District of Delaware.

“FBA” refers to Functional Behavior Assessment.

“Home School” or “Neighborhood School” is the school within a student’s designated feeder pattern.

“Hub classrooms” refers to the District’s school-based services and supports that are provided to meet the educational needs of District students.

“IDEA” refers to the Individuals with Disabilities Education Improvement Act.

“IEP” means an Individualized Education Plan, which details a student’s special-educational needs and describes how the District will meet those needs as defined in 20 U.S.C. §1414.

“Positive Behavioral Support Plan (PBSP)” is a plan that is included in a student’s IEP that identifies behaviors of concern, strategies to replace behaviors of concern with appropriate behavior, and strategies for response to behaviors of concern, with the goal of improving behavior using positive approaches and strategies.

“TAPP” is a Secondary Transition Parallel Program for youth with disabilities, ages 18-21 who have graduated and are entitled to a free appropriate educational program through age 21. The program focuses on life skills and job training.

“TOTS” refers to Transitioning Our Toddlers to School, a state of Delaware early intervention program that assists students identified as needing specialized supports, including three and four year-olds with disabilities or developmental delay, to transition into schools within the District.

**V.
APPOINTMENT OF SPECIAL MASTER**

4. The Parties hereby consent and agree to the appointment by the United States District Court of Delaware of Dr. Linda O. Rhen as Special Master with all necessary and appropriate authority to supervise and enforce compliance with the terms of this Agreement. The Special Master shall be compensated by the District at a reasonable hourly rate for time and related expenses (including travel).

5. The Special Master is hereby authorized to take all actions reasonably necessary to enforce the terms of this Agreement, including, but not limited to: inspecting any facility at the District, accessing the data, books and records of the District, with or without notice (but with implementing appropriate safeguards where needed to protect student privacy); accessing and interviewing students, faculty, and other District employees and personnel with or without notice and without the need to obtain an order compelling process or attendance.

6. Six (6) months from the Effective Date, the Special Master shall furnish the Court with an Interim Report detailing the District’s progress in achieving the objectives prescribed by this Agreement, and providing any other information the Special Master deems relevant to the District’s compliance with the terms and conditions hereof. The Special Master shall provide

additional Interim Reports at intervals not to exceed six (6) months throughout the duration of this Agreement, or as otherwise required by the Court.

7. Five (5) years from the Effective Date of this Agreement, the Special Master shall provide a Proposed Final Report if the Special Master is prepared to recommend that the District has complied with the recommendations of the Special Master and the terms of this Agreement. This Proposed Final Report shall include all information called for in each Interim Report, as well as a recommendation from the Special Master whether the District's compliance with the terms of this Agreement, and with the legal obligations on which it is based, is sufficiently satisfactory to allow for the termination of this Agreement, as well as the reasons for the Special Master's recommendation.

8. The District shall bear all expenses incurred by the Special Master, including the costs of consultants and other personnel selected by the Special Master. In the event of any dispute over the reasonableness of a given expense, the District shall negotiate in good faith with the Special Master to resolve the dispute before seeking any relief from this Court.

VI. SPECIFIC REQUIREMENTS

9. The District will discontinue the Carver Academy Program at the end of the 2019-2020 school year. District students enrolled in the Carver Academy Program at the end of the 2019-2020 school year will be transitioned to an appropriate placement as determined by the IEP team with the goal of transitioning students to their home school or the least restrictive environment pursuant to the IDEA. The District agrees to consult with the Special Master concerning the transition of students from the Carver Academy Program. Carver may be used by the District for other purposes, with notice to the Special Master, but it shall not be used for

Alternative Educational Placement for students in grades K through 12, or for any purpose inconsistent with the terms of this Agreement. After consultation with the Special Master, the District may use Hub classrooms within the District or High Roads classrooms within District schools as placement options for a student with disabilities if the IEP team determines such placement is appropriate in order to meet needs of the student.

High School Students

10. In accordance with paragraph 1 above, for the District students in grades 9 through 12, the District shall provide increased career and technical opportunities for District students and a variety of elective course offerings. The District shall implement pre-referral intervention strategies in its high schools and appropriate functional behavioral assessment prior to referral for more intense intervention or special education. District students with behavioral challenges will be supported in their home schools by additional staff, including paraprofessionals and a mental health counselor, as needed, and teachers will receive training in pre-referral intervention strategies. If after pre-referral intervention strategies, a student is identified as a student with a disability, the student will be included in the general education classrooms to the greatest extent appropriate consistent with their respective IEPs. In each and every instance in which the IEP team considers a more restrictive environment, the IEP team will demonstrate consideration of and application of additional supplementary aids and services prior to removal of students from their general education classrooms. Hub classrooms have been established, in both high schools to provide more intense intervention. If a separate educational setting is warranted by the student's individual needs, other specialized programs including High Road will be considered. The District already has a start on implementing pre-referral intervention strategies, functional behavioral assessments, and targeted interventions in some of its schools

Middle School Students

11. In accordance with paragraph 1 above, for the students in grades 6 through 8, the District shall provide increased career and technical opportunities for the students and a variety of elective course offerings. The District will implement pre-referral intervention strategies in its middle schools and appropriate functional behavioral assessment prior to referral for more intense intervention or special education. Students with behavioral challenges will be supported in their home schools by additional staff, including paraprofessionals and a mental health counselor, as needed, and teachers will receive training in pre-referral intervention strategies. If after pre-referral intervention strategies, a student is identified as a student with a disability, the student will be included in general education classrooms to the greatest extent appropriate consistent with their respective IEPs. In each and every instance in which the IEP team considers a more restrictive environment, the IEP team will demonstrate consideration of and application of additional supplementary aids and services prior to removal of students from their general education classrooms. Hub classrooms will be established, as needed at District middle schools to provide more intense intervention. If a separate educational setting is warranted by the student's individual needs, other specialized programs including High Road will be considered. The District already has a start on implementing pre-referral intervention strategies, functional behavioral assessments, and targeted interventions in some of its schools.

Elementary School Students

12. For the District students in Kindergarten through grade 5, classrooms in District elementary schools will be used to support the students. A Board Certified Behavioral Specialist shall be on site to assist in providing technical training and support for the teachers and paraprofessionals. The District will implement pre-referral intervention strategies in its

elementary schools and appropriate functional behavioral assessment prior to referral for more intense intervention or special education. Students with behavioral challenges will be supported in their neighborhood schools by additional staff, including paraprofessionals and a mental health counselor, as needed, and teachers will receive training in pre-referral intervention strategies. If, after pre-referral intervention strategies, a student is identified as a student with a disability, the student will be included in general education classrooms to the greatest extent appropriate consistent with their respective IEP. In each and every instance in which the IEP team considers a more restrictive environment, the IEP team will demonstrate consideration of and application of additional supplementary aids and services prior to removal of students from their general education classrooms. Hub classrooms will be established, as needed in District elementary schools to provide more intense intervention. If a separate educational setting is warranted by the student's individual needs, other specialized programs including High Road will be considered.

13. The location of the nurse's office at Carver was moved for the remainder of the 2019/20 school year so as to remove the need for any student attending CAMP or other Carver Academy Programs to access the hallway in which the TOTS program is located.

14. Annually, District staff, who serve students in need of the highest level of support, will receive professional development for eight days (1 day per month) provided by consultants who will also observe teachers and provide coaching and debriefing. The professional development topics and strategies will be designed to fulfill the intent of this consent agreement and planned in consultation with and upon approval of the Special Master.

15. Following a student's placement within a Separate Special Education classroom in an Integrated Setting Student (Setting C under the state of Delaware's special education procedures) for at least 15 instructional days, members of the IEP team will reconvene to review

the student's PBSP to ensure the PBSP is appropriately targeting the student's behavior(s) of concern. If the behavior(s) of concern are not being targeted through the current PBSP, an updated FBA will be conducted. The District will identify a system of progress monitoring for interventions and behaviors of concern.

16. By the end of the 2019-2020 school year, the District will develop a "transition to home school" procedure overseen by one District employee for all students returning from the Carver Academy Program to his or her home school, a Hub classroom, or an appropriate placement as determined by the IEP team. The transition process will require the reconvening of the IEP Team, including members of the Carver Academy Program staff, the student's parents or guardian, and members of the student's home school staff. Specific transition plans shall be developed for each child; each receiving teacher shall participate in training and professional development with regards to the needs of the child the teacher is receiving.

17. Data will continue to be collected throughout the 2019/20 school year from all students, parents, teachers, and staff of Carver to facilitate the transfer of students and closure/repurposing of the school building. The Special Master will identify the information and categories of data to be collected and reported as components of the reports to be made to the Court on the implementation of this agreement.

18. The District's School Focus Initiative for the 2019-2020 school year will include a comprehensive survey for all stakeholders (parents, teachers, paraprofessionals, and administrators) to include a needs-based assessment for all schools in the District to determine what resources are needed to serve students with disabilities in their home schools. The Director of Special Education will review the data and make recommendations to the Superintendent or his

designee. The Superintendent or his designee shall review the recommendations and share the recommendations with the Special Master.

19. During the 2018-2019 school year, as part of the District's professional development plan, the District consulted with a team of independent professionals from the University of Delaware who have experience in inclusive schools, and worked with the consultants to develop a framework that will support students in their home schools. During the 2019-2020 school year, the District contracted with *Learning-Focused*® (LF) for the purpose of improving teacher pedagogy in high impact strategies, and increase achievement for all students; as well as, with Dr. Amy Pleet-Odle for Inclusion-Focused Coaching (IFC) and Specially-Designed Instruction (SDI). The District will be using LF coaching to improve the instructional planning and delivery of teachers for improved student outcomes, including academic and behavioral considerations. When students are engaged in rigorous and relevant learning, the classroom is a positive learning environment. In working with Dr. Pleet-Odle, the District is looking to provide an emphasized focus on special education inclusion classroom practices with the goal of strengthening the co-teaching structure and improving data-driven instruction for special education students. Dr. Pleet-Odle will report to the Special Master.

20. The District will create, and share through social media platforms, Podcasts which address special education topics/issues, including the District's commitment to include students with disabilities in general education classrooms. Data shall be kept on who listens to the podcasts. The District will also continue to conduct Parent Focus Meetings four times per year regarding special education issues. Parents are notified of these meetings by email, flyer, District alerts, website, and Facebook.

21. The District will continue to use the IEP process to develop individual transition plans for every student currently placed in the Carver Academy Program as they return to their home schools or other placements as determined by their IEP team and provide unique programming that meets the federal and state special education guidelines. The IEP teams will continue to discuss all support necessary for the transition. Again, the plan is to return all Carver students by September 2020 to their home school.

22. The District has held fifteen (15) District-wide mandatory inclusive education training sessions in the 2018-2019 school year using professional consultation services. The District believes it has demonstrated improvement during 2019/20 in the following areas:

- Co-teaching classes;
- Use of behavior interventions;
- Therapeutic support at the home school;
- Highly individualized support plans, for most intense cases.

23. The District will continue to provide professional development with respect to the Common Core Standards. This professional development will include meeting the needs of diverse learners, tiered instruction, trauma informed teaching or professional development that would allow teachers and administrators to understand the school to prison pipeline. All District staff were trained in Trauma Informed Care. This initiative will continue during the 2019-2020 school year. Training was conducted by District clinical counselors and school psychologists after they attended Trauma Informed Care training.

24. The District Assistant Superintendent will oversee educational equity within the schools, and provide a report on equity to the Special Master.

25. Individualized needs of students placed in the Carver Academy Program will continue to be addressed through each student's current IEP, including plans for interventions to support reading disabilities. Research-based reading instruction and interventions will be determined by certified reading specialists and will be based on the results of assessments from certified school psychologists and reading specialists. Phonics instructions will be provided as is age appropriate and as is recommended by certified reading specialists and certified school psychologists and online resources may be used for improving reading instruction but will not be a substitute for direct instruction provided by certified reading specialists. No one program shall be used as a "catch all" for all students. Each child shall be supported with research-based instruction that shall be focused on their specific area of need and progress monitoring shall occur every two weeks and be recorded in a graph for each individual student. Online resources will be available to students from home.

26. The District will continue using Career Cruising as supported by the Delaware Department of Education as a part of every student's pathway to graduation requirements. Based on the data collected for careers of interest, students will work with case managers to create transition plans aligning with pathway offerings at the high schools as indicated within each student's IEP. For the 2019-2020 school year, the faculty and staff at the Carver Academy Program will collaborate with District high schools for Carver students be enrolled in pathway courses aligned with the student's career goals. Carver Academy Program students will either attend the courses at their respective home school, or participate in a hybrid learning experience utilizing the online Schoology platform. Appropriate teacher support, supplementary aids and services shall be provided to those in hybrid courses to ensure success and meaningful transition

to college or career. The hybrid learning opportunity includes a blend of onsite and online learning. This methodology prepares students for this type of learning experience at the collegiate level.

27. The District will form a Community Advisory Board that includes various local stakeholders who may discuss various matters within the District. The advisory board shall include at least two members from the local level NAACP, and at least one member who has expertise and commitment to inclusive practices. The Community Advisory Board shall consult with the Special Master, and the Special Master shall be involved in determining the purpose of the Community Advisory Board, its membership, and other topics, such as, meeting agendas. The District will also implement monthly family events for the parents and guardians of children with disabilities. Topics will include:

- ABC's of the IEP;
- Inclusive practices;
- Understanding the needs of students with disabilities;
- Related services options;
- How to support the life and social skills of the student; and
- Understanding procedural safeguards.

28. The District will provide a monthly update to the Board as part of the Board's Google docs regarding academic monitoring and progress.

29. At the conclusion of each quarterly progress monitoring period, the Director of Special Education will provide the Special Master with an update on student academic performance and also on the progress as students transition from the Carver Academy Program to their respective home schools. The Special Education Director shall consult as part of the IEP

team on scheduling to ensure that appropriate transition planning and preparation are occurring for each student currently placed in the Carver Academy Program.

30. The Special Education Coordinators in each school building will continue to monitor student academic performance and progress as students currently placed in the Carver Academy Program transition to their respective home schools, and consult as part of the IEP team on scheduling. Following progress monitoring, the Special Education Coordinators shall provide the Special Master with a quarterly report on such progress. The Special Master will identify the information and data points to be included in quarterly reports.

31. The Director of Special Education will continue to provide the Board and building administrators reports at regularly scheduled bi-monthly curriculum meetings including statistics on student discipline by race, ethnicity, gender and disability to ensure that disproportionate assignment of discipline is being addressed. The Administrator of Student Services will continue to monitor this data on a weekly basis. The District will continue to provide professional development on this topic to District discipline faculty.

32. The Director of Special Education, along with a team of certified reading specialists, will complete a full review of the reading levels of all children in grades K-3 in the District and of all students K-12 enrolled in the Carver Academy Program in 2019/20 by January 30, 2020. The report will be disaggregated by race, ethnicity, gender and disability and will be provided to the Board and Special Master with recommendations. The District will use this data to develop interventions and supports for students.

33. The District will continue the Special Outreach Services initiative which provides a higher level of services to District students with the greatest needs by using District schools to provide a variety of services. The District partners with Psychological Associates of Southern

Delaware, Delaware Psychological Services, DGS, Lighthouse Therapy Center, Eastern Shore Psychological, Children and Families First, and several independent counselors. The District's Special Outreach Services Coordinator works as the liaison between the mental health counselor at the school, the parents, and the agency providing services to best meet the needs of students.

VII.

USE OF THE CARVER BUILDING

34. The District anticipates the building housing the Carver Academy Program which will be discontinued at the end of the 2019-2020 school year will be used for the following:

- a) Comprehensive South Early Learning Center (Pre-K services);
- b) Food pantry;
- c) Comprehensive year-round child find services to include evaluations of students who may qualify for special education services;
- d) Thrift shop;
- e) Adult education;
- f) Staff professional development;
- g) TAPP;
- h) TOTS; and
- i) Any other use as deemed appropriate by the District; however, the Carver

building shall not be used as an Alternative Education Placement for students K through 12.

VIII.

RETENTION OF JURISDICTION

35. The Court shall retain jurisdiction over the Parties, and over this Action, for a period of five (5) years from the date of entry in order to enforce the terms of this Agreement and to adjudicate any dispute regarding or arising therefrom.

36. If any part of this Agreement is for any reason held to be invalid, unlawful, or otherwise unenforceable by a court of competent jurisdiction, such decision shall not affect the validity of any other part of the Agreement. Furthermore, the Parties shall meet within 15 days of any such decision to determine whether the Agreement should be revised or supplemented in response to the Court's decision.

37. In the event of any alleged breach of the terms of this Consent Order, Plaintiffs may request appropriate relief from the Court, including but not limited to injunctive relief; provided that, Plaintiffs agree that they will not initiate or pursue any such breach without first attempting to resolve issues by negotiating in good faith for 30 days, or until the Parties reach an impasse, whichever comes sooner, over adequate measures to correct any alleged shortcomings in the District's compliance with this Agreement.

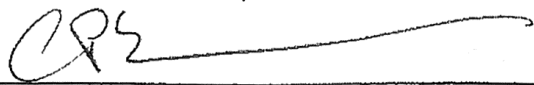
38. At the conclusion of the five (5) years described above, and upon the issuance of a satisfactory Proposed Final Report from the Special Master finding the District has achieved each of the requirements called for under this Agreement, this action shall be dismissed without prejudice to any party.

IX. FEES AND COSTS

39. The Parties shall bear their own attorneys' fees and costs incurred up to and including the date that this Agreement is fully executed, as well as attorneys' fees and costs incurred during the implementation of the terms of this Agreement. No party shall be deemed a

“prevailing party.” More specifically, Plaintiffs and Plaintiffs’ counsel waive any right to petition for an award of attorneys’ fees or costs, unless the Plaintiffs are required to, and successfully enforce any provision of this Agreement.

CROSS & SIMON, LLC



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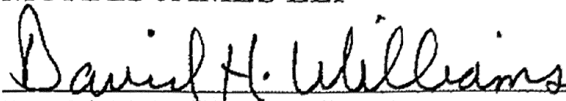
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School District

SO ORDERED this ____ day of _____, 2019.

The Honorable Richard G. Andrews
United States District Court for the District of
Delaware